

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(RICHMOND DIVISION)**

IN RE: * **CASE No.: 08-35653-KRH**
CIRCUIT CITY STORES, INC., et al., * **(CHAPTER 11)**
DEBTORS. * **(JOINTLY ADMINISTERED)**

* * * * *

**RESPONSE OF TOSHIBA AMERICA CONSUMER PRODUCTS, L.L.C.
TO DEBTORS' THIRTY-FOURTH OMNIBUS OBJECTION TO CLAIMS
(MODIFICATION OF CERTAIN DUPLICATE 503(b)(9) CLAIMS)**

Toshiba America Consumer Products, L.L.C. ("TACP"), by its attorneys, files this response to the *Debtors' Thirty-Fourth Omnibus Objection to Claims (Modification of Certain Duplicate 503(b)(9) Claims)* [Docket No. 4598] (the "Objection"), and states:

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334. This is a contested matter under Federal Rules of Bankruptcy Procedure 6006(b) and 9014, and is a core proceeding under 28 U.S.C. § 157(b).
2. The Debtors commenced this bankruptcy case on November 10, 2008 (the "Petition Date") by filing voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").
3. TACP filed a timely Section 503(b)(9) Claim Request Form with the Debtors' claims processing agent, Kurtzman Carson Consultants LLC ("KCC"), on December 19, 2008, asserting a claim for administrative expenses under § 503(b)(9) of the Bankruptcy Code in the

Jeremy S. Friedberg, VSB No. 40228
Gordon S. Young, VSB No. 68822
Leitess Leitess Friedberg + Fedder PC
One Corporate Center
10451 Mill Run Circle, Suite 1000
Owings Mills, Maryland 21117
(410) 581-7400
(410) 581-7410 (facsimile)

Attorneys for Toshiba America Consumer Products, L.L.C.

amount of \$5,735,769.00 (the “Original Administrative Claim”). The Original Administrative Claim was assigned claim number 1331.

4. Separately, TACP timely filed a proof of claim in the amount of \$6,393,681.50 with KCC on January 30, 2009, asserting a claim entitled to treatment as an administrative priority under § 507(a)(2) of the Bankruptcy Code (the “Original Proof of Claim”). The Original Proof of Claim was assigned claim number 9648.

5. Upon reviewing its records, TACP determined that certain goods, in the total amount of \$442,520.00, were received by the Debtors outside of § 503(b)(9)’s statutory period of 20 days that preceded the Petition Date.

6. Accordingly, TACP amended its Original Administrative Claim and its Original Proof of Claim to properly characterize its claims under § 503(b)(9) of the Bankruptcy Code. As amended, the Original Administrative Claim asserts a claim for administrative expenses in the amount of \$5,293,249.00 (together with the Original Administrative Claim, the “Administrative Claim”). As amended, the Original Proof of Claim asserts a claim in the total amount of \$6,393,681.50, of which \$5,293,249.00 is entitled to treatment as an administrative priority under § 507(a)(2) (together with the Original Proof of Claim, the “Proof of Claim”). The balance of the claim listed in the Proof of Claim, \$1,100.432.50, is to be treated as a general unsecured, non-priority claim. Copies of the Administrative Claim and the Proof of Claim, without supporting documentation due to their size, are attached hereto collectively as Exhibit 1 and incorporated herein by reference.

7. In their Objection, the Debtors seek modification of the Proof of Claim, asserting that the amount and basis of a portion of TACP’s claim is also set forth in a corresponding § 503(b)(9) claim. According to the Debtors, the repetitive claim should be disallowed, with the

classification of the surviving portion of the Proof of Claim – \$1,100,432.50 – remaining classified as filed.

8. The Objection, however, classifies the Proof of Claim wholly as an administrative claim. This is not correct.

9. The sum of \$1,100,432.50 should be treated as a general unsecured, non-priority claim, and TACP filed the claim as such. For the sake of clarity of the record, the \$1,100,432.50 surviving portion of the Proof of Claim should be treated as a general unsecured, non-priority claim, rather than as the administrative claim described by the Debtors in their Objection.

10. TACP does not object to the modification of the Proof of Claim, provided that the Administrative Claim survives in the amount of \$5,293,249.00 without objection from the Debtors as to form or content.

11. TACP reserves its rights to supplement this Response at any time prior to a final hearing on the Objection.

12. TACP respectfully requests that the Court treat this Response as a written memorandum of points and authorities or waive any requirement that this Response be accompanied by a written memorandum of points and authorities as described in Local Bankruptcy Rule 9013-1(H).

WHEREFORE, Toshiba America Consumer Products, L.L.C. respectfully requests that this Court:

- A. Overrule the Debtors' Objection to the extent that it seeks disallowance of any portion of claim number 1331 filed by TACP;
- B. Modify claim number 9648 filed by TACP to reflect a general unsecured, non-priority claim in the amount of \$1,100,432.50; and

C. Provide such other and further relief as the Court determines to be necessary.

/s/ Jeremy S. Friedberg
Jeremy S. Friedberg, VSB No. 40228
Gordon S. Young, VSB No. 68822
Leitess Leitess Friedberg + Fedder PC
One Corporate Center
10451 Mill Run Circle, Suite 1000
Owings Mills, Maryland 21117
(410) 581-7400
(410) 581-7410 (facsimile)

*Attorneys for Toshiba America
Consumer Products, L.L.C.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of September, 2009, a copy of the foregoing, along with attached exhibit, was served *via* first-class mail, postage prepaid, and, if the recipients are properly registered, *via* the Court's CM/ECF system, on:

Gregg M. Galardi, Esq.
Ian S. Fredericks, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
PO Box 636
Wilmington, DE 19899

Chris L. Dickerson, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
333 West Wacker Drive
Chicago, IL 60606

Dion W. Hayes, Esq.
Douglas M. Foley, Esq.
McGuireWoods LLP
One James Center
901 East Cary Street
Richmond, VA 23219

Office of the United States Trustee
701 East Broad Street, Suite 4304
Richmond, VA 23219.

/s/ Jeremy S. Friedberg
Jeremy S. Friedberg